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7                   **UNITED STATES DISTRICT COURT**  
8                   **WESTERN DISTRICT OF WASHINGTON**  
9                   **AT SEATTLE**

10 MICHAEL KUNNEN, an individual,

11                   Plaintiff,

12                  vs.

13 ALLSTATE FIRE & CASUALTY  
14 INSURANCE COMPANY, a foreign  
corporation,

15                   Defendant.

16  
17                  CASE NO. 2:23-cv-01958-TL

18                  STIPULATED PROTECTIVE ORDER

19                  NOTED FOR: APRIL 15, 2024

20                  1. PURPOSES AND LIMITATIONS

21                  Discovery in this action is likely to involve production of confidential,  
22 proprietary, or private information for which special protection may be warranted.  
23 Accordingly, the parties hereby stipulate to and petition the court to enter the  
24 following Stipulated Protective Order. The parties acknowledge that this  
25 agreement is consistent with LCR 26(c). It does not confer blanket protection on  
all disclosures or responses to discovery, the protection it affords from public  
disclosure and use extends only to the limited information or items that are  
entitled to confidential treatment under the applicable legal principles, and it does  
not presumptively entitle parties to file confidential information under seal.

26                  2. "CONFIDENTIAL" MATERIAL

27                  STIPULATED PROTECTIVE ORDER CASE NO.  
28                  2:23-cv-01958-TLPg. – 1

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1 “Confidential” material shall include the following documents and tangible things  
2 produced or otherwise exchanged:

3 [The parties must include a list of specific documents such as “company’s  
4 customer list” or “plaintiff’s medical records;” do not list broad categories of  
documents such as “sensitive business material”].

5 • Plaintiff’s medical records;  
6 • Plaintiff’s personal financial records;  
7 • Plaintiff’s business records;  
8 • Any records that contain information about Plaintiff’s children;  
• Allstate’s claim handling manuals, policies, and procedures.

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential material  
11 (as defined above), but also (1) any information copied or extracted from  
12 confidential material; (2) all copies, excerpts, summaries, or compilations of  
13 confidential material; and (3) any testimony, conversations, or presentations by  
parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover information  
15 that is in the public domain or becomes part of the public domain through trial or  
otherwise.

16 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17       4.1 Basic Principles. A receiving party may use confidential material that is  
18 disclosed or produced by another party or by a non-party in connection with this  
19 case only for prosecuting, defending, or attempting to settle this litigation.  
20 Confidential material may be disclosed only to the categories of persons and  
21 under the conditions described in this agreement. Confidential material must be  
stored and maintained by a receiving party at a location and in a secure manner  
that ensures that access is limited to the persons authorized under this agreement.

22       4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
23 otherwise ordered by the court or permitted in writing by the designating party, a  
receiving party may disclose any confidential material only to:

1                             (a) the receiving party's counsel of record in this action, as well as  
2 employees of counsel to whom it is reasonably necessary to disclose the  
3 information for this litigation;

4                             (b) the officers, directors, and employees (including in house counsel) of  
5 the receiving party to whom disclosure is reasonably necessary for this litigation,  
6 unless the parties

7 agree that a particular document or material produced is for Attorney's Eyes Only  
8 and is so designated;

9                             (c) experts and consultants to whom disclosure is reasonably necessary for  
10 this litigation and who have signed the "Acknowledgment and Agreement to Be  
11 Bound" (Exhibit A);

12                             (d) the court, court personnel, and court reporters and their staff;

13                             (e) copy or imaging services retained by counsel to assist in the duplication  
14 of confidential material, provided that counsel for the party retaining the copy or  
15 imaging service instructs the service not to disclose any confidential material to  
16 third parties and to immediately return all originals and copies of any confidential  
17 material;

18                             (f) during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the "Acknowledgment and Agreement  
20 to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or  
21 ordered by the court. Any person presented as a witness pursuant to Fed. R. Civ.  
22 P. 30(b)(6) must sign the Acknowledgement and Agreement to be Bound before  
23 being provided confidential material produced by another party. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal confidential  
25 material must be separately bound by the court reporter and may not be disclosed  
to anyone except as permitted under this agreement;

21                             (g) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or knew the information.

23                             4.3 Filing Confidential Material. Before filing confidential material or  
24 discussing or referencing such material in court filings, the filing party shall  
25 confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A),  
to determine whether the designating party will remove the confidential  
designation, whether the document can be redacted, or whether a motion to seal or  
stipulation and proposed order is warranted. During the meet and confer process,  
STIPULATED PROTECTIVE ORDER CASE NO.

1 the designating party must identify the basis for sealing the specific confidential  
 2 information at issue, and the filing party shall include this basis in its motion to  
 3 seal, along with any objection to sealing the information at issue. Local Civil Rule  
 4 5(g) sets forth the procedures that must be followed and the standards that will be  
 5 applied when a party seeks permission from the court to file material  
 6 under seal. A party who seeks to maintain the confidentiality of its information  
 7 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the  
 8 party filing the motion to seal. Failure to satisfy this requirement will result in the  
 9 motion to seal being denied, in accordance with the strong presumption of public  
 10 access to the Court's files.

## 11 5. DESIGNATING PROTECTED MATERIAL

12       5.1 Exercise of Restraint and Care in Designating Material for Protection.  
 13 Each party or non-party that designates information or items for protection under  
 14 this agreement must take care to limit any such designation to specific material  
 15 that qualifies under the appropriate standards. The designating party must  
 16 designate for protection only those parts of material, documents, items, or oral or  
 17 written communications that qualify, so that other portions of the material,  
 18 documents, items, or communications for which protection is not warranted are  
 19 not swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
 21 are shown to be clearly unjustified or that have been made for an improper  
 22 purpose (e.g., to unnecessarily encumber or delay the case development process or  
 23 to impose unnecessary expenses and burdens on other parties) expose the  
 24 designating party to sanctions.

25 If it comes to a designating party's attention that information or items that it  
 26 designated for protection do not qualify for protection, the designating party must  
 27 promptly notify all other parties that it is withdrawing the mistaken designation.

28       5.2 Manner and Timing of Designations. Except as otherwise provided in  
 29 this agreement (see, e.g., second paragraph of section 5.2(b) below), or as  
 30 otherwise stipulated or ordered, disclosure or discovery material that qualifies for  
 31 protection under this agreement must be clearly so designated before or when the  
 32 material is disclosed or produced.

33           (a) Information in documentary form: (e.g., paper or electronic documents  
 34 and deposition exhibits, but excluding transcripts of depositions or other pretrial

35 STIPULATED PROTECTIVE ORDER CASE NO.

36 2:23-cv-01958-TLPg. – 4

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1 or trial proceedings), the designating party must affix the word  
 2 "CONFIDENTIAL" to each page that contains confidential material. If only a  
 3 portion or portions of the material on a page qualifies for protection, the  
 producing party also must clearly identify the protected portion(s) (e.g., by  
 making appropriate markings in the margins).

4       (b) Testimony given in deposition or in other pretrial proceedings: the  
 5 parties and any participating non-parties must identify on the record, during the  
 6 deposition or other pretrial proceeding, all protected testimony, without prejudice  
 7 to their right to so designate other testimony after reviewing the transcript. Any  
 8 party or non-party may, within fifteen days after receiving the transcript of the  
 9 deposition or other pretrial proceeding, designate portions of the transcript, or  
 exhibits thereto, as confidential. If a party or non-party desires to protect  
 confidential information at trial, the issue should be addressed during the pre-trial  
 conference.

10      (c) Other tangible items: the producing party must affix in a prominent  
 11 place on the exterior of the container or containers in which the information or  
 12 item is stored the word "CONFIDENTIAL." If only a portion or portions of the  
 13 information or item warrant protection, the producing party, to the extent  
 practicable, shall identify the protected portion(s).

14       5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 15 failure to designate qualified information or items does not, standing alone, waive  
 16 the designating party's right to secure protection under this agreement for such  
 17 material. Upon timely correction of a designation, the receiving party must make  
 reasonable efforts to ensure that the material is treated in accordance with the  
 provisions of this agreement.

18      6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19       6.1 Timing of Challenges. Any party or non-party may challenge a  
 20 designation of confidentiality at any time. Unless a prompt challenge to a  
 21 designating party's confidentiality designation is necessary to avoid foreseeable,  
 22 substantial unfairness, unnecessary economic burdens, or a significant disruption  
 23 or delay of the litigation, a party does not waive its right to challenge a  
 confidentiality designation by electing not to mount a challenge promptly after the  
 original designation is disclosed.

24       6.2 Meet and Confer. The parties must make every attempt to resolve any  
 25 dispute regarding confidential designations without court involvement. Any

1 motion regarding confidential designations or for a protective order must include  
 2 a certification, in the motion or in a declaration or affidavit, that the movant has  
 3 engaged in a good faith meet and confer conference with other affected parties in  
 4 an effort to resolve the dispute without court action. The certification must list the  
 5 date, manner, and participants to the conference. The parties shall attempt to  
 6 resolve each challenge in good faith within 14 days of the service of notice. A  
 7 good faith effort to confer requires a face-to-face meeting or a telephone  
 8 conference.

9       6.3 Judicial Intervention. If the parties cannot resolve a challenge without  
 10 court intervention, the designating party may file and serve a motion to retain  
 11 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule  
 12 5(g), if applicable). The burden of persuasion in any such motion shall be on the  
 13 designating party. Frivolous challenges, and those made for an improper purpose  
 14 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
 15 expose the challenging party to sanctions. All parties shall continue to maintain  
 16 the material in question as confidential until the court rules on the challenge.

17       7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 18 OTHER LITIGATION

19       If a party is served with a subpoena or a court order issued in other litigation that  
 20 compels disclosure of any information or items designated in this action as  
 21 “CONFIDENTIAL,” that party must:

22           (a) promptly notify the designating party in writing and include a copy of  
 23 the subpoena or court order;

24           (b) promptly notify in writing the party who caused the subpoena or order  
 25 to issue in the other litigation that some or all of the material covered by the  
 26 subpoena or order is subject to this agreement. Such notification shall include a  
 27 copy of this agreement; and

28           (c) cooperate with respect to all reasonable procedures sought to be pursued  
 29 by the designating party whose confidential material may be affected.

30       8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

31       If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
 32 confidential material to any person or in any circumstance not authorized under  
 33 this agreement, the receiving party must immediately (a) notify in writing the  
 34 designating party of the unauthorized disclosures, (b) use its best efforts to  
 35 STIPULATED PROTECTIVE ORDER CASE NO.

1 retrieve all unauthorized copies of the protected material, (c) inform the person or  
2 persons to whom unauthorized disclosures were made of all the terms of this  
3 agreement, and (d) request that such person or persons execute the  
“Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
3 A.

4 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
5 **PROTECTED MATERIAL**

6 When a producing party gives notice to receiving parties that certain inadvertently  
7 produced material is subject to a claim of privilege or other protection, the  
8 obligations of the receiving parties are those set forth in Federal Rule of Civil  
Procedure 26(b)(5)(B). This provision is not intended to modify whatever  
9 procedure may be established in an e-discovery order or agreement that provides  
for production without prior privilege review. The parties agree to the entry of a  
10 non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

12 Within 60 days after the termination of this action, including all appeals, each  
13 receiving party must return all confidential material to the producing party,  
14 including all copies, extracts and summaries thereof. Alternatively, the parties  
may agree upon appropriate methods of destruction.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of  
16 all documents filed with the court, trial, deposition, and hearing transcripts,  
17 correspondence, deposition and trial exhibits, expert reports, attorney work  
18 product, and consultant and expert work product, even if such materials contain  
confidential material. An expert witness may retain one archival copy of that  
witnesses' expert report and deposition transcript.

19 The confidentiality obligations imposed by this agreement shall remain in effect  
20 until a designating party agrees otherwise in writing or a court orders otherwise.

21 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

22 Dated this Monday, April 15, 2024

23 FOX ROTHSCHILD LLP 24 <u>/s/Bryan J. Case [with authority]</u> Bryan J. Case, WSBA #41781 25 Al Roundtree, WSBA #54851 Grace Wan, WSBA #61427	EMBER LAW PLLC and NUR LAW PLLC /s/Chance B. Yager Chance B. Yager, WSBA #44384 1700 Seventh Avenue Suite 2100
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STIPULATED PROTECTIVE ORDER CASE NO.

2:23-cv-01958-TLPg. – 7

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17 Attorneys for Plaintiffs

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STIPULATED PROTECTIVE ORDER CASE NO.  
2:23-cv-01958-TLPg. – 8

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1 Counsel for Plaintiff and Counsel for Defendant hereby certify that they have  
2 met and conferred prior to the filing of their Proposed Stipulated Protective Order.

2 Dated this Monday, April 15, 2024

3 FOX ROTHSCHILD LLP  
4 /s/Bryan J. Case [with authority]  
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6 Al Roundtree, WSBA #54851  
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10 Attorneys for Defendant

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25 Attorneys for Plaintiffs

1 PURSUANT TO STIPULATION, IT IS SO ORDERED  
2

3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the  
4 production of any documents, electronically stored information (ESI) or  
5 information, whether inadvertent or otherwise, in this proceeding shall not, for the  
6 purposes of this proceeding or any other federal or state proceeding, constitute a  
7 waiver by the producing party of any privilege applicable to those documents,  
8 including the attorney-client privilege, attorney work-product protection, or any  
9 other privilege or protection recognized by law. This Order shall be interpreted to  
10 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions  
11 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or  
12 shall serve to limit a party's right to conduct a review of documents, ESI or  
13 information (including metadata) for relevance, responsiveness and/or segregation  
14 of privileged and/or protected information before production. Information  
15 produced in discovery that is protected as privileged or work product shall be  
16 immediately returned to the producing party.

17 DATED: April 16, 2024

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26   
27 Tana Lin  
28 United States District Judge

STIPULATED PROTECTIVE ORDER CASE NO.  
2:23-cv-01958-TLPg. – 10

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare  
5 under penalty of perjury that I have read in its entirety and understand the  
6 Stipulated Protective Order that was issued by the United States District Court for  
7 the Western District of Washington on [date] in the case of *Kunnen v. Allstate*  
8 *Fire & Casualty Insurance Company, Case No. 2:23-cv-01958-TL*. I agree to  
9 comply with and to be bound by all the terms of this Stipulated Protective Order  
10 and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance  
with the provisions of this Order.

11 I further agree to submit to the jurisdiction of the United States District Court for  
12 the Western District of Washington for the purpose of enforcing the terms of this  
13 Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action.

14 Date:

15 City and State where sworn and signed:

16 Printed name:

17 Signature: